



KEEPING THE INTERNET  
OPEN • INNOVATIVE • FREE

[www.cdt.org](http://www.cdt.org)

CENTER FOR DEMOCRACY  
& TECHNOLOGY

1634 Eye Street, NW  
Suite 1100  
Washington, DC 20006

March 17, 2015

The Honorable Mark Leno  
State Capitol, Room 5100  
Sacramento, CA 95814

**Re: Support SB 178 (Leno & Anderson)  
The California Electronic Communications Privacy Act**

Dear Senator Leno:

The Center for Democracy & Technology strongly supports SB 178 – the California Electronic Communications Privacy Act. SB 178 safeguards the rights of Californians, spurs innovation, and supports public safety by updating California privacy law for the modern digital world.

Californians use technology every day to connect, communicate, work and learn. The state's leading technology companies rely on consumer confidence in these services to help power the California economy. Californians are guaranteed a constitutional right to privacy and the legislature has long been a leader in enacting laws to properly safeguard these rights.

But while technology has advanced exponentially, California's electronic privacy laws have not kept pace. Californians are increasingly concerned about warrantless government access to their digital information, and for good reason. Law enforcement is increasingly taking advantage of outdated privacy laws to turn mobile phones into tracking devices and access sensitive emails, digital documents, and text messages without proper judicial oversight.<sup>1</sup>

As a result, public confidence in technology has been badly damaged. Polls consistently show that consumers believe that their electronic information is sensitive – and that current laws provide inadequate protection from government monitoring.<sup>2</sup> Companies in turn are increasingly concerned about loss of consumer trust and its business impact.

SB 178 will require that the police go to a judge and get a warrant before they can access sensitive information, including data from personal electronic devices, emails, digital documents, text messages, and location information under normal circumstances. The bill also includes thoughtful exceptions to ensure that they



can continue to effectively and efficiently protect public safety. The bill's notice, reporting, and enforcement provisions provide proper transparency and oversight and mechanisms to ensure that the law is followed.

Courts and legislatures around the country are recognizing the need to update privacy laws for the modern digital age. In two recent decisions, *United States v. Jones* and *Riley v. California*, the U.S. Supreme Court upheld Fourth Amendment privacy rights against warrantless government surveillance. Justice Alito in *Jones* also invited lawmakers to take action, noting that in circumstances involving dramatic technological change "a legislative body is well suited to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way."

California has fallen behind fifteen states as diverse as Texas, Maine, and Utah, which have already heeded Justice Alito's call and enacted legislation to safeguard rights, spur innovation, and support public safety. Nine states have already safeguarded location information<sup>3</sup> and five states have protected electronic communications content.<sup>4</sup> The White House has called on lawmakers to update the law to "ensure the standard of protection for online, digital content is consistent with that afforded in the physical world." And a federal bill garnered over 270 bipartisan co-sponsors in the United States Congress.

Many of the state's leading technology companies and organizations and a bipartisan group of legislators have come together to support the California Electronic Communications Privacy Act (SB 178) and make sure that Californians are not forced to choose between using new technology and keeping their personal lives private and California's technology companies are not burdened with privacy laws stuck in the digital dark ages.

Respectfully,

Chris Calabrese  
*Senior Policy Director*

G.S. Hans  
*Policy Counsel and Director, CDT-SF*

---

<sup>1</sup> For example, Google's transparency report shows a 250% jump demands from U.S. law enforcement in just the past five years, including 32,000 requests in the first 6 months of 2014 alone.

<sup>2</sup> According to a recent Pew Internet & Society survey, 80% of adults feel that Americans are rightly concerned about government monitoring of Internet communications, 70% of social networking site users express concern about government access, and 75% or more believe that their email messages, text messages, and location information are sensitive.

<sup>3</sup> IN H.B. 1009 (2014); IL S.B. 2808 (2013); MD S.B. 698 (2013); ME S.P. 157 (2013); MN S.F. 2466 (2014); MT H.B. 603 (2013); TN S.B. 2087 (2013); UT H.B. 128 (2014); WI A.B. 536 (2013).

<sup>4</sup> HI H.B. 1641 (2013); MD S.B. 698 (2013); ME S.P. 484 (2013); TX H.B. 2268 (2013); UT H.B. 128 (2014).